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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 FEDERAL NATIONAL MORTGAGE
8 ASSOCIATION,

9 Plaintiff(s),

10 v.

11 VILLAS AT HUNTINGTON HOMEOWNERS
12 ASSOCIATION, et al.,

13 Defendant(s).

Case No. 2:16-CV-2968 JCM (GWF)

ORDER

14 Presently before the court is plaintiff Federal National Mortgage Association's ("Fannie
15 Mae") motion for summary judgment. (ECF No. 23). Defendants Villas at Huntington
16 Homeowners Association ("the HOA") (ECF No. 24), RH Kids, LLC ("RH Kids") (ECF No. 27),
17 and Red Rock Financial Services, LLC ("Red Rock") (ECF No. 28) filed responses, to which
18 Fannie Mae filed a reply (ECF No. 31).

19 Also before the court is Fannie Mae's motion for an extension of time to file a reply in
20 support of its summary judgment motion. (ECF No. 30).

21 **I. Introduction**

22 This action involves the parties' interests in real property located at 623 Port Talbot
23 Avenue, Las Vegas, Nevada, 89178 ("the property"). (ECF No. 1).

24 *a. Fannie Mae's interest in the property*

25 A deed of trust listing Grant Bailey and Melissa Klysner as the borrowers ("borrowers"),
26 Countrywide KB Home Loans ("Countrywide") as the lender, and MERS as beneficiary solely as
27 nominee for Countrywide and Countrywide's successors and assigns, was executed on March 8,
28 2007 and recorded on March 26, 2007. (ECF No. 23). The deed of trust granted Countrywide a

1 security interest in the property and secured the repayment of a loan in the original amount of
2 \$280,306.00 to the borrowers. *Id.*

3 On June 5, 2009, MERS, as nominee for Countrywide and Countrywide's successors and
4 assigns, recorded an assignment of the deed of trust to BAC Home Loans Servicing, LP ("BAC")
5 f/k/a Countrywide Home Loans Servicing LP. (ECF No. 23). On that same day, BAC recorded
6 an assignment of the deed of trust to Fannie Mae. *Id.*

7 *b. Defendant's interest in the property*

8 On September 14, 2009, the HOA recorded a notice of delinquent assessment lien against
9 the property. (ECF No. 23). On March 31, 2010, the HOA recorded a notice of default and election
10 to sell. *Id.* On July 22, 2014, the HOA recorded a notice of sale indicating a foreclosure sale of
11 the property was scheduled for August 14, 2014. *Id.*

12 On August 14, 2014, the HOA conducted a non-judicial foreclosure sale, at which G&P
13 Investment Enterprises, LLC ("G&P") purchased the property for \$15,500.00. (ECF No. 23). On
14 August 28, 2014, a foreclosure deed was recorded, listing G&P as the purchaser at the HOA
15 foreclosure sale. *Id.*

16 On June 3, 2016, a deed purporting to transfer G&P's interest in the property to RH Kids
17 was recorded. (ECF No. 23).

18 *c. Fannie Mae's complaint*

19 Fannie Mae challenges the conduct surrounding the August 14, 2014, HOA foreclosure
20 sale and seeks to preserve its pre-sale interest in the property. *Id.* Fannie Mae alleges the following
21 causes of action: (1) declaratory relief under 12 U.S.C. § 4617(j)(3) against RH Kids; (2) quiet title
22 under 12 U.S.C. § 4617(j)(3) against RH Kids; (3) declaratory relief under the Fifth and Fourteenth
23 Amendments of the United States Constitution against all defendants; (4) quiet title under the Fifth
24 and Fourteenth Amendments of the United States Constitution and RH Kids; (5) declaratory
25 judgment against RH Kids; (6) breach of NRS 116.1113 against the HOA against RH Kids; (7)
26 wrongful disclosure against the HOA and Red Rock; and (8) injunctive relief against RH Kids.
27 (ECF No. 1).

1 **II. Legal Standard**

2 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
3 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
4 show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment
5 as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is “to isolate
6 and dispose of factually unsupported claims” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–
7 24 (1986).

8 For purposes of summary judgment, disputed factual issues should be construed in favor
9 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
10 entitled to a denial of summary judgment, the non-moving party must “set forth specific facts
11 showing that there is a genuine issue for trial.” *Id.*

12 In determining summary judgment, the court applies a burden-shifting analysis. “When
13 the party moving for summary judgment would bear the burden of proof at trial, it must come
14 forward with evidence which would entitle it to a directed verdict if the evidence went
15 uncontroverted at trial.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480
16 (9th Cir. 2000). Moreover, “[i]n such a case, the moving party has the initial burden of establishing
17 the absence of a genuine issue of fact on each issue material to its case.” *Id.*

18 By contrast, when the non-moving party bears the burden of proving the claim or defense,
19 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
20 element of the non-moving party’s case; or (2) by demonstrating that the non-moving party failed
21 to make a showing sufficient to establish an element essential to that party’s case on which that
22 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
23 party fails to meet its initial burden, summary judgment must be denied and the court need not
24 consider the non-moving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
25 60 (1970).

26 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
27 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
28 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the

1 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
2 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
3 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
4 630 (9th Cir. 1987).

5 **III. Discussion**

6 As an initial matter, the court will deny as moot Fannie Mae’s motion for an extension of
7 time to file a reply in support of its summary judgment motion. (ECF No. 30). Fannie Mae
8 requested an extension to and including November 7, 2017. *Id.* Fannie Mae filed its reply on
9 November 7, 2017, in accordance with its motion. *Id.*

10 *a. Fannie Mae’s claims for declaratory relief and injunctive relief*

11 Fannie Mae’s first, third, and fifth causes of action assert claims for declaratory relief.
12 (ECF No. 1).

13 “[A] ‘claim’ for declaratory relief is not a substantive cause of action at all; it is merely a
14 prayer for a remedy.” *Pettit v. Fed. Nat’l Mortg. Ass’n*, no. 2:11-cv-00149-JAD-PAL, 2014 WL
15 584876 (D. Nev. Feb. 11, 2014); *see Wells Fargo Bank, N.A. v. SFR Invs. Pool 1, LLC*, no. 2:15-
16 cv-02257-JCM-CWH, 2017 WL 1902158, at *4 (D. Nev. May 9, 2017) (citing *Stock West, Inc. v.*
17 *Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989)); *see also*
18 *Centex Homes v. Everest Nat’l Ins. Co.*, no. 2:16-cv-01275-GMN-CWH, 2017 WL 4349017 (D.
19 Nev. Sept. 29, 2017) (“[T]he Court will interpret Plaintiff’s claim for declaratory relief as a request
20 for a remedy rather than a separate cause of action . . .”).¹ As Fannie Mae’s first, third, and fifth
21 causes of action request a remedy of declaratory relief, and are not substantive causes of action,
22 the court will dismiss the claims to the extent they purport to create causes of action. *See Wells*
23 *Fargo*, 2017 WL 1902158, at *4.

24 In addition, Fannie Mae’s eighth cause of action asserts a claim for injunctive relief. (ECF
25 No. 1). The court will dismiss this claim without prejudice, as the court follows the well-settled
26 rule that a claim for “injunctive relief” standing alone is not a cause of action. *See, e.g., In re Wal-*

27
28 ¹ The court in *Centex* denied defendant’s motion to dismiss plaintiff’s claim for declaratory relief due to its interpretation of plaintiff’s claim as a request for a remedy rather than a separate cause of action. 2017 WL 4349017, at *5.

1 *Mart Wage & Hour Emp't Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007); *Tillman*
2 *v. Quality Loan Serv. Corp.*, No. 2:12-CV-346 JCM RJJ, 2012 WL 1279939, at *3 (D. Nev. Apr.
3 13, 2012) (finding that “injunctive relief is a remedy, not an independent cause of action”); *Jensen*
4 *v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010) (“A request for
5 injunctive relief by itself does not state a cause of action.”).

6 *b. Fannie Mae’s quiet title claim pursuant to § 4617(j)(3)*

7 Fannie Mae’s motion argues that partial summary judgment in its favor is proper as to its
8 claim for quiet title because 12 U.S.C. § 4617(j)(3) (“the federal foreclosure bar”) preempts
9 contrary state law. (ECF No. 23).

10 HERA established FHFA to regulate Fannie Mae, Freddie Mac, and Federal Home Loan
11 Banks. *See* Pub. L. No. 110–289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.* In September
12 2008, FHFA placed Fannie Mae and Freddie Mac into conservatorships “for the purpose of
13 reorganizing, rehabilitating, or winding up [their] affairs.” 12 U.S.C. § 4617(a)(2). As
14 conservator, FHFA immediately succeeded to “all rights, titles, powers, and privileges” of Fannie
15 Mae and Freddie Mac. 12 U.S.C. § 4617(b)(2)(A)(i). Moreover, Congress granted FHFA
16 exemptions to carry out its statutory functions—specifically, in acting as conservator, “[n]o
17 property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure, or sale without
18 the consent of [FHFA], nor shall any involuntary lien attach to the property of [FHFA].” 12 U.S.C.
19 § 4617(j)(3).

20 In *Skylights LLC v. Byron*, 112 F. Supp. 3d 1145 (D. Nev. 2015), the court addressed the
21 applicability of 12 U.S.C. § 4617(j)(3) and held that the plain language of § 4617(j)(3) prohibits
22 property of FHFA from being subjected to a foreclosure without its consent. *See also Saticoy Bay,*
23 *LLC v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015)
24 (holding that 12 U.S.C. § 4617(j)(3) preempts NRS 116.3116 to the extent that a HOA’s
25 foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae while
26 those entities are under FHFA’s conservatorship).

27 Since *Skylights*, this court has consistently held that 12 U.S.C. § 4617(j)(3) prohibits
28 property of FHFA from foreclosure absent agency consent. *See, e.g., 1597 Ashfield Valley Trust*

1 *v. Fed. Nat. Mortg. Ass’n System*, case no. 2:14-cv-02123-JCM-CWH, 2015 WL 4581220, at *7
2 (D. Nev. July 28, 2015). Recently, the Ninth Circuit also held that the federal foreclosure bar
3 applies to private foreclosure sales and “supersedes the Nevada superpriority lien provision.” *See*
4 *Berezovsky v. Moniz*, 869 F.3d 923, 929, 931 (9th Cir. 2017).

5 Here, Fannie Mae acquired interest in the property on June 4, 2009. Pursuant to §
6 4617(b)(2)(A)(i), FHFA, upon its appointment as conservator, immediately succeeded to all rights,
7 titles, powers, and privileges of Fannie Mae. *See* 12 U.S.C. § 4617(b)(2)(A)(i). Therefore, FHFA
8 held an interest in the deed of trust as conservator for Fannie Mae prior to the HOA foreclosure
9 sale on August 14, 2014.

10 FHFA did not consent to the extinguishment of Fannie Mae’s property interest through the
11 HOA foreclosure sale. As the Ninth Circuit held in *Berezovsky*, “[t]he Federal Foreclosure Bar
12 does not require the Agency to actively resist foreclosure. Rather, the statutory language cloaks
13 agency property with Congressional protection unless or until the Agency affirmatively
14 relinquishes it.” 869 F.3d at 929. Thus, the plain language of § 4617(j)(3) prevents the HOA’s
15 foreclosure on the property from extinguishing the deed of trust when, as here, FHFA did not
16 affirmatively consent to foreclosure.

17 Fannie Mae has standing to invoke the federal foreclosure bar. FHFA does not need to be
18 a party to the litigation in order to invoke § 4617(j)(3). *See Saticoy Bay, LLC Series 2714*
19 *Snapdragon v. Flagstar Bank, FSB*, 699 Fed. Appx. 658, 2017 WL 4712396 (9th Cir. Oct. 20,
20 2017) (holding a loan servicer, in addition to Fannie Mae, has standing to assert a claim of federal
21 preemption); *Berezovsky v. Moniz*, 869 F.3d 923, 929, 931 (9th Cir. 2017). Similarly, the Nevada
22 Supreme Court recently held that the powers set forth in HERA and FHFA’s regulations are
23 intentionally broad and not limited in use only to FHFA. *Nationstar Mortgage, LLC v. SFR*
24 *Investments Pool 1, LLC*, 396 P.3d 754, 758 (Nev. 2017) (holding that authorized servicers of
25 Fannie Mae “may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither
26 [the Enterprise] nor the FHFA need be joined as a party.”). Further, 12 C.F.R. § 1237.3 gives
27 FHFA the authority to delegate through Fannie Mae.

1 RH Kids argues that because Fannie Mae appears to have securitized the loan into a
2 mortgage-backed security trust, Fannie Mae's ownership of the loan and the federal foreclosure
3 bar's protection are in question. (ECF No. 27). The court disagrees. Based on a plain reading of
4 § 4617(b)(2)(A)(i) and this court's prior holdings, securitization of the loan does not alter Fannie
5 Mae's ownership or FHFA's ability to "succeed" to ownership of Fannie Mae's interest. *See* §
6 4617(b)(a)(A)(i); *see also JP Morgan Chase Bank, N.A. v. Las Vegas Dev't Grp., LLC*, No. 2:15-
7 cv-1701-JCM-VCF, 2017 WL 937722 (D. Nev. Mar. 9, 2017); *Elmer v. JPMorgan Chase & Co.*,
8 707 F. App'x 426, 428-29 (9th Cir. 2017). Therefore, FHFA held an interest in the deed of trust
9 as conservator for Fannie Mae prior to the HOA foreclosure sale on August 14, 2014.

10 Here, Fannie Mae's attached to its motion Fannie Mae's business records regarding loan
11 servicing and acquisition history, accompanied by a supporting declaration. *See* (ECF No. 23)
12 (containing business records and supporting declaration). Under *Berezovsky*, the court may
13 consider these records as evidence when considering motions for summary judgment. *See* 869
14 F.3d at 932–33. Further, similarly to the appellant in *Berezovsky*, RH Kids here provides no
15 evidence to contradict Fannie Mae's offered documents. *Cf. id.* at 933 ("Berezovsky points to no
16 evidence before the district court that created a material dispute regarding the legal import of
17 Freddie Mac's exhibits concerning its interest in the property.").

18 Fannie Mae obtained its interest in the property prior to the alleged HOA foreclosure sale.
19 As Fannie Mae was subject to conservatorship at the time of the alleged foreclosure, and the
20 agency did not consent to foreclosure, Fannie Mae's interest in the property survived the alleged
21 foreclosure. Fannie Mae is entitled to summary judgment on its quiet title claim pursuant to §
22 4617(j)(3).

23 *c. Fannie Mae's remaining arguments*

24 Given the court's holding on Fannie Mae's § 4617(j)(3) quiet title cause of action, the court
25 need not address Fannie Mae's additional arguments in favor of its claim for quiet title, which are
26 pled in the alternative.

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